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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

EMMANUEL OYEBOBOLA,

Plaintiff and Appellant,

v.

AMAZING GRACE HOME CENTER
et al.,

Defendants and Respondents.

B298587

(Los Angeles County
Super. Ct. No. 19VECV00129)

APPEAL from a judgment of the Superior Court of Los Angeles County, Virginia Keeny, Judge. Affirmed.

IvyCrest Attorneys, Christian I. Oronsaye, for Plaintiff and Appellant.

Law Offices of Alice Mkroyan and Alice Mkroyan for Defendants and Respondents.

Plaintiff and appellant Emmanuel Oyebobola (plaintiff) filed suit against defendants and respondents Amazing Grace Home Center and Grace Oyebobola (defendants). The gist of the suit is that defendants made defamatory statements about plaintiff—initially in a declaration filed in court and again when that declaration (or the information in it) was disseminated to numerous individuals and entities familiar with plaintiff. Believing plaintiff’s lawsuit arose from the filing of the declaration, defendants filed a Code of Civil Procedure section 425.16 special motion to strike plaintiff’s complaint.¹ The trial court granted the motion, struck plaintiff’s complaint in its entirety, and dismissed the action. On appeal from that ruling, plaintiff advances an argument he did not raise below: that the court’s remedy of dismissal was too broad because there are some allegations in the complaint that do arise from activity protected by section 425.16, the anti-SLAPP statute, even if other allegations do not. We consider whether plaintiff may obtain reversal on this asserted ground.

I. BACKGROUND

A. *Background Facts (as Alleged by Plaintiff in the Complaint)*

Plaintiff is a general contractor in the social services sector. He and his wife, Grace Oyebobola, had marital dissolution proceedings pending in January 2019.

One of the assets at issue in the dissolution was a piece of property located at 20916 Itasca Street (the Itasca Property) and

¹ Undesignated statutory references that follow are to the Code of Civil Procedure.

owned by Trinity International Christian Center. The Itasca Property is also the subject of another lawsuit: *Board of Trustees, Trinity International Christian Center vs. Grace Oyebobola* (the Trinity Board Lawsuit). Plaintiff is not a party to the Trinity Board Lawsuit.

Grace filed a declaration in the Trinity Board Lawsuit in December 2018. The declaration, which was filed in support of a motion to set aside a default entered in that litigation, makes certain assertions regarding plaintiff. Among other things, the declaration states “Emmanuel Oyebobola is . . . very dubious because it is during the dissolution case that I came to realize that over the years Emmanuel Oyebobola has done so many unsavory [things] regarding our community real properties, including having me sign documents that I am now finding out were not what he purported them to be” The declaration further attested plaintiff was facing contempt charges for violation of an “A.T.R.O,” accused plaintiff and his attorney of falsifying a proof of service, and asserted plaintiff created the Board of Trustees of Trinity International Christian Center to deprive Grace of her community property share of the Itasca Property.

B. This Defamation-Based Lawsuit

Plaintiff filed the complaint in this action in January 2019. The complaint alleges four causes of action against both defendants: (1) defamation and libel, (2) negligence, (3) negligent supervision, and (4) negligent infliction of emotional distress.

The key allegations that serve as the factual predicate for the lawsuit are described in the following three paragraphs alleged as part of the complaint’s first cause of action for

defamation, and thereafter incorporated in the remaining causes of action (we italicize portions that are of particular interest in this appeal):

“13. *On or about December 12[,] 2018 and thereafter December 26, 2018 including the present, the Defendants published statements without privilege stating amongst others that the plaintiff is “dubious”, plaintiff foregd [sic] documents, criminal, convicts, and/or a fraudster, with motive to obtain the subject property. A true and correct copy of the statement made by Defendants is set forth as Exhibit ‘A’ to this complaint.*

14. On information and belief, shortly after the publication was completed, defendants disseminated to dozens, if not hundreds, of contractors, suppliers, vendors and everyone associated with Plaintiff, copies of the declaration that plaintiff is “dubious”, plaintiff foregd [sic] documents, criminal convicts, and/or a fraudster, with motive to obtain the subject property. *Defendants did this by filing the statement in court and distributing the statements to everyone associated with the Plaintiff.*

15. Defendants did not stop at just publication of false records about the plaintiff, defendants thereafter called by phone[] everyone associated with the Plaintiff including but not limited to other persons in the social service sector, insurance companies and everyone to whom Plaintiff deal with [sic], informing them about the content of the publication and about the plaintiff.”

The remaining causes of action refer generally to the action of “publish[ing]” the “statements” or their “publication.” The complaint also alleges the declaration’s statements are false and

plaintiff does not have a criminal record for any matter concerning defendants.

The first cause of action for defamation alleges plaintiff is entitled to general and special damages, with the special damage allegation asserting harm done to his property, business, trade, profession, or occupation, including money expended as a result of defendants' defamatory statements and assertions. The remaining causes of action, each of which realleges and incorporates by reference the prior allegations, more generally allege plaintiff is entitled to damages as a result of the alleged acts.

C. Defendants' Special Motion to Strike

Defendants responded to the complaint by filing an anti-SLAPP special motion to strike the complaint in its entirety. The motion argued plaintiff's claims arose from protected activity within the meaning of section 425.16, subdivisions (e)(1) (a statement or writing made before a legislative, executive, or judicial proceeding) and (e)(2) (a statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body). Regarding subdivision (e)(1), the motion argued plaintiff's complaint arose from Grace's declaration filed in the Trinity Board Lawsuit. Regarding subdivision (e)(2), the motion argued the complaint arose from an issue under review in a judicial proceeding, namely the declaration made in connection with the issue of how to characterize the Itasca Property, which was under consideration in the divorce case. The motion further argued plaintiff could show no probability of prevailing on the allegations implicating anti-SLAPP protected activity because the declaration's filing

and preparation were protected by the litigation privilege and plaintiff's complaint was unverified and based almost entirely on information and belief allegations.

Plaintiff opposed defendants' special motion to strike, primarily arguing the anti-SLAPP statute does not apply to speech or activity that is unlawful and/or illegal as a matter of law (which, in his view, Grace's declaration was). Plaintiff further contended the act complained of was the making of false and defamatory statements, which he asserted was not an act in furtherance of defendants' right of petition or free speech. Plaintiff also argued he had a probability of prevailing on his claims, he had sufficiently pled the elements of the respective claims, and defendants had not demonstrated any of the relevant statements about plaintiff in Grace's declaration were true. Plaintiff did not argue his complaint advanced so-called "mixed" causes of action, i.e., causes of action that included claims arising from both protected and unprotected activity, such that the court should enter only a limited striking order rather than striking and dismissing the entire complaint.

Plaintiff submitted his own declaration in support of the opposition that largely tracked the allegations of the complaint. His declaration claimed defendants published statements asserting plaintiff is dubious; had forged documents; is a criminal, convict, or fraudster; and is engaging in illegal and unlawful acts with the motive to obtain the Itasca Property. Plaintiff declared he asked defendants to delete or retract the statements, but defendants refused. Plaintiff further declared he "was informed" that "shortly after the publication was completed, defendants disseminated to dozens, if not hundreds, of contractors, suppliers, vendors, and everyone associated with

[him] copies of the declaration Defendants did this by filing the statement in court and distributing the statements [sic] to everyone associated with me.” Defendants, plaintiff averred, also placed phone calls to everyone associated with him and informed them of the content of the publication.²

D. The Trial Court Grants the Motion and Strikes the Complaint in Its Entirety

The record on appeal does not include a reporter’s transcript of the hearing the trial court held to consider defendants’ special motion to strike. The court did issue a written order after the hearing, however, and it states the court granted the motion. According to the post-hearing order, the court found the conduct about which plaintiff complained was the filing of a declaration in a lawsuit, which was unquestionably protected conduct under the anti-SLAPP statute. The court also rejected plaintiff’s argument that the speech was illegal as a matter of law, noting the evidence needed to conclusively show the conduct was illegal or defendants had to concede it was illegal, neither of which was the case.

The court further found plaintiff did not have a probability of prevailing on any of his causes of action because the statements made in the declaration were protected by the litigation privilege. The court noted plaintiff had made vague allegations about flyers sent to his associates but stated plaintiff

² Defendants filed a reply brief, along with a request for judicial notice. The request for judicial notice asked the trial court to judicially notice an order on court fee waiver and a stipulation regarding the partial settlement in the divorce case.

had failed to provide evidence of any flyer or other proof it was authored or distributed by Grace. It also found plaintiff's statements, on information and belief, that the declaration was handed out to others was not sufficient to meet the standard of proof required in opposing a motion to strike.

The trial court granted defendants' request for attorney's fees incurred in connection with the anti-SLAPP motion and dismissed the complaint with prejudice.

II. DISCUSSION

Plaintiff argues his complaint should not have been stricken in its entirety because the asserted grounds for liability involved both protected activity (the filing of the declaration) and unprotected activity (the further dissemination of the declaration). There may be something to that argument. The problem for plaintiff, however, is that he never raised it in the trial court.

"The forfeiture rule generally applies in all civil and criminal proceedings. [Citations.] The rule is designed to advance efficiency and deter gamesmanship. As we explained in *People v. Simon* (2001) 25 Cal.4th 1082 []: ""The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had" [Citation.] "No procedural principle is more familiar to this Court than that a constitutional right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." . . . ' [Citation.] [¶] "The rationale for this rule was aptly explained in *Sommer v. Martin*

(1921) 55 Cal.App. 603 at page 610[] . . .: “In the hurry of the trial many things may be, and are, overlooked which would readily have been rectified had attention been called to them. The law casts upon the party the duty of looking after his legal rights and of calling the judge’s attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.”” [Citation.]” (Fn. omitted; [citations].)’ [Citation.]” (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264-265; see also *Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1526 [refusing to consider an anti-SLAPP argument made for the first time on appeal]; *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767.)

Here, as we have already highlighted, plaintiff never made the sole argument he makes now to seek reversal. He never contended, so far as the record before us reveals, that the complaint included some allegations of protected activity such that a more surgical striking order (rather than an order striking the entire complaint) was necessary; instead, he argued only that Grace’s declaration was speech or activity that is illegal as a matter of law. Plaintiff (wisely) abandons that argument now, but he “may not change his theory of the case for the first time on appeal.” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 321, fn. 10.) His contentions in this appeal are forfeited, and we shall affirm the ruling below on that ground.³

³ We deny plaintiff’s motion for judicial notice. The documents he asks us to notice were not before the trial court and they are not relevant to the disposition of this appeal. (*Center for*

DISPOSITION

The judgment of dismissal is affirmed. Defendants shall recover their costs on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.

Biological Diversity v. Department of Fish & Wildlife (2017) 17 Cal.App.5th 1245, 1258, fn. 8.)